

SUPREME COURT  
OF THE UNITED STATES

OCTOBER TERM, 1943

No. 333

EARL MOORE, Appellant below, and  
W. E. EDWARDS and D. L. LACEY, his sureties,  
on appeal, Petitioners

ILLINOIS CENTRAL RAILROAD COMPANY,  
Appellee below and Respondent

PETITION FOR WRIT OF HABEAS CORPUS  
STATES CIRCUIT COURT OF THE  
FIFTH CIRCUIT AND DISTRICT COURT  
OF

EDWARD J. MOORE,  
United States Marshal,  
District Court,

WILLIAM L. LACEY,  
U. S. Marshal,  
District Court,

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**No.** \_\_\_\_\_

EARL MOORE, Appellant below, and  
W. E. EDWARDS and D. L. LACEY, his sureties  
on appeal, Petitioners

v.

ILLINOIS CENTRAL RAILROAD COMPANY,  
Appellee below and Respondent

To the Honorable Harlan Fiske Stone, Chief  
Justice of the United States, and the Associate Jus-  
tices of the Supreme Court of the United States:

Your petitioners respectfully show:

I.

**STATEMENT OF THE MATTER INVOLVED.**

Earl Moore, for brevity herein referred to as  
petitioner, instituted this suit in the District Court

of the United States for the Southern District of Mississippi at Jackson for the recovery of wages. The suit was dismissed in the trial court on motion of the respondent for a summary judgment on a plea of *res judicata*. The petitioner appealed to the Circuit Court of Appeals for the Fifth Circuit where the judgment of the trial court was affirmed on June 17, 1943 by an opinion which is reported in 136 Fed. (2d) 412.

The only question presented in this case is whether or not this right of action was merged into the judgment in the case of *Earl Moore v. Illinois Central Railroad Co.*, 312 U. S. 630; 112 F. (2d) 959, where petitioner sued respondent for damages in September 1936 for his wrongful discharge from its employ in February 1933, and recovered \$4,183.20 in said former action. Petitioner, as a member of a labor union having a contract with respondent for its members, sued in the District Court of the United States at Jackson, Mississippi, on account of a breach of the same contract of employment for the recovery of wages due him from September, 1936 to June, 1942. (R. 1-16). The respondent pleaded in the District Court that the judgment in the former action had been paid and was a bar to this action. (R. 17-27). The respondent moved for a summary judgment (R. 46-47) and said motion was sustained by the trial court on that ground. (R. 49-50). The petitioner appealed to the Circuit Court of Appeals for the Fifth Circuit (R.52) where the judgment of

the trial court was affirmed on June 17, 1943, as aforesaid. (R. 63).

Petitioner's contract of employment was not for a fixed period of time but provided that it could be terminated only in a stated manner (R. 13) and his employment was never terminated in accordance with such provisions. The petitioner continued to proffer his services to the respondent as a trainman from the date of his discharge in February, 1933 but to no avail. This court held in the former action that petitioner was wrongfully discharged—not that the contract was ever terminated—and awarded him damages in the amount of \$4,183.20 which were paid. The petitioner refused to release respondent from future damages in the payment of said judgment and declined to cash its check until such release was deleted therefrom. (R. 48-49). This suit is governed by the laws of the State of Mississippi. In Mississippi the rule is that a discharged employee may file a series of actions for wages as they become due or accumulate without impinging upon the res judicata rule; and that in a suit on a contract of employment of this nature, that of necessity each action must be brought only for the previously accrued wages. The petitioner in the former action sued for \$12,000.00 as damages for breach of this contract. (R. 29-31). He was awarded the lesser amount of \$4,183.20. This suit is for wages which have accrued to petitioner and matured since the filing of the former suit. The form of the former action in no way evinced any binding election to sue

for future damages for breach of such contract and this suit is not barred by such former action under the applicable rule in such cases in Mississippi.

## II.

### REASONS RELIED ON FOR ALLOWANCE OF WRIT.

On June 17, 1943, the Circuit Court of Appeals for the Fifth Circuit affirmed the judgment of the United States District Court in Mississippi which awarded the respondent a summary judgment dismissing this suit on the point stated. The jurisdiction of the District Court was founded on diversity of citizenship (R. 1-2) and the suit is controlled by the laws of Mississippi as the Circuit Court recognized. (R. 60). U. S. C. A., Title 28, Section 725, required the lower court to apply the law of Mississippi in deciding this case. The contract in suit was made with a labor union having thousands of members in the employ of the Illinois Central System, literally extending the full length and breadth of the State of Mississippi whose rights will probably be affected in future litigation if a rule in the Federal Court different from the State rule on the question is allowed to stand. The decision of the Circuit Court of Appeals is untenable and thereby erroneously decides an important question of local law in a way which probably conflicts with such applicable and controlling decisions of the Supreme Court of Mississippi on the question presented.

The Supreme Court of Mississippi holds where the period of employment is not fixed, that a separate cause of action arises as each pay day arrives and the wages mature. Each suit must be brought for all wages due at the time of the suit and a second action will not be allowed therefor. One such action, however, does not in any manner impair the injured party's right to bring a subsequent action, or as many subsequent actions as may be necessary for the recovery of subsequently maturing wages under the same contract. The rule is tersely stated in **Thorne v. True Hixon Lumber Co.**, 167 Miss. 266, 148 So. 388, as follows:

"A contract is generally single, and a breach of it affords but one cause of action, but this court is aligned with those jurisdictions which hold that where wages are to be paid in installments during the execution of the contract, several suits may be maintained for accrued wages. *Armfield v. Nash*, 31 Miss. 361; *Williams v. Luckett*, 77 Miss. 394, 26 So. 967, 968. In the latter case, Williams had discharged Luckett, allegedly without cause, and Luckett sued for and recovered the wages for January, 1899. Thereafter he sued for wages accruing from February 1 to August 1, 1899, and in passing upon his right to recover in the second suit; the court said: 'If Williams had not discharged Luckett, but had failed to pay him as the monthly wages became due, it is clear that Luckett would have had a right of action accruing to



him at the expiration of each month of service, and might have sustained as many suits as there were defaults of payment. The bringing of the first suit for the January wages did not end the contract, nor amount to a rescission of it on the part of Lockett. The contract, notwithstanding the suit for damages for the nonpayment for the monthly sum of wages, remained in full force; and Williams might thereafter have received him back into his employ, or continued to subject himself to other suits for the continued breach of it. The contract, by its terms, is equivalent to the making of as many contracts as there are periods of payment, or at least the sums to be paid are divisible by its express terms; and the terms of the contract are the law of the contract.'

"This doctrine is applicable with particular force where, as here, the contract is not for a definite or fixed term, but the termination thereof is dependent upon contingencies which render it impossible to, at the time, definitely determine when it will expire."

Cf. *Armfield v. Nash*, 31 Miss. 361 (1856); *Williams v. Lockett*, 77 Miss. 394, 26 So. 967 (1899).

Such irreconcilable conflict in the Federal and State decisions on the question of *res judicata* should not be allowed to stand, particularly in view of the nature of the contract in suit. The petitioners should

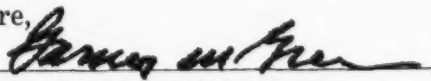
be awarded the writ of certiorari to the lower court for a review of such proceedings under U. S. C. A., Title 28, Section 347(a) and Supreme Court Rule 38, Par. 5(b), because of such departure from and failure to apply the applicable and controlling decisions of the Supreme Court of Mississippi on this question.


WHEREFORE, your petitioners pray that a writ of certiorari issue under the seal of this court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of said Circuit Court had in the case numbered and entitled on its docket, No. 10,630, Earl Moore, Appellant, v. Illinois Central Railroad Company, Appellee, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court be reversed by the court and for such further relief as to this court may seem proper.

Dated August 30, 1943.

Earl Moore,

By

  
Counsel for Petitioners,  
Jackson, Mississippi.

  
Of Counsel,  
Jackson, Mississippi.